

January 27, 2012

The Council on Environmental Quality  
Attn: Horst Greczmiel, Associate Director for National Environmental Policy Act Oversight  
722 Jackson Place, NW  
Washington, DC 20503

**Re: Draft Guidance on Improving the Process for Preparing Efficient and Timely  
Environmental Reviews under the National Environmental Policy Act**

On behalf of the 5,000 members of the American Road and Transportation Builders Association (ARTBA), I respectfully offer comments on the Council on Environmental Quality's (CEQ's) notice regarding Draft Guidance on Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act (NEPA) published in the December 13, 2011, *Federal Register*.

ARTBA's membership includes public agencies and private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country. Our industry generates more than \$200 billion annually in U.S. economic activity and sustains more than 2.2 million American jobs.

Because of the nature of their businesses, ARTBA members undertake a variety of activities that are directly impacted by NEPA. ARTBA's public sector members adopt, approve, or fund transportation plans, programs, or projects which are all subject to NEPA's requirements. ARTBA's private sector members plan, design, construct and provide supplies for these federal transportation improvement projects. This document represents the collective views of our 5,000 member companies and organizations. ARTBA supports NEPA and realizes it is an integral component of the transportation planning process. Many, if not all, of the significant environmental achievements of the transportation community and ARTBA members would not be possible without NEPA.

The guidance proposed by CEQ aims to create a more streamlined process for the preparation and completion of environmental reviews for projects going through the NEPA review and approval process. ARTBA has long advocated for such reforms centered on reducing unnecessary delay. ARTBA also shares CEQ's goal of protecting the environment and minimizing the impacts of development.

According to a report by the U.S. Government Accountability Office (GAO), as many as 200 major steps are involved in developing a transportation project from the identification of the project need to the start of construction. According to the same report, it typically takes between nine and 19 years to plan, gain approval of, and construct a new major federally funded highway project. This process involves dozens of overlapping state and federal laws, including NEPA, state NEPA equivalents, wetland permits, endangered species implementation, clean air conformity, etc. Often times these procedures mask disparate agendas or, at a minimum, demonstrate an institutional lack of interagency coordination that results in unnecessary delays. In fact, a study by FHWA found the time required to process environmental documents for large projects has doubled over the past two decades.

The CEQ guidance includes a number of reforms ARTBA has long supported, and in fact specifically outlined in previous testimony presented to the House of Representatives in 2005 regarding NEPA reform, including:

- **Encouraging concise NEPA documents:** CEQ's guidance encourages concise NEPA documents and specifically recommends setting the length of environmental impact statements (EISs) at a maximum of 300 pages (with a recommended length of 150 pages). Adoption of this policy would lead to delays in the NEPA process being substantially reduced. Currently, the EIS process for a new highway project is a multi-year endeavor. A major reason for this is the length of the EIS itself, which can literally span multiple volumes totaling thousands of pages under the current NEPA regulations.

The EIS is meant as a resource for affected members of the community to gain information about the proposed project. Current EISs are impossible for many lawyers to understand and completely inaccessible to community members without any prior training in the fields of law or environmental consulting. One factor behind lengthy EISs is the fear of litigation on the part of project developers. In an effort to anticipate issues which could be used to delay a project through litigation, project developers have reportedly attempted to "bulletproof" their EISs. This results in a document which attempts to address every possible issue or scenario to arise in connection with a proposed project no matter the relevance or how likely it is to be a factor in environmental decision making. The end product of this process is an EIS which is completely unwieldy and does not serve its intended purpose.

ARTBA recommended setting a page limit threshold on the length of EISs that would help them better serve the communities for which they are intended to be written. It would also force the authors of EISs to write in clear and more concise terms. Finally, it would reduce the delay associated with new transportation construction projects by dramatically cutting down the time needed to complete the final document.

- **Integrating NEPA with planning:** Another reforms ARTBA vigorously advocated is integration of NEPA with the transportation planning process. ARTBA has recommended increased integration of NEPA in both legislative and regulatory settings repeatedly and the issue is also one ARTBA has recommended be part of the next reauthorization legislation for the federal surface transportation program.

For transportation projects, an extensive amount of information is gathered during the planning process, which often occurs prior to the actual triggering of NEPA requirements. Allowing information gathered during the planning process, to the extent it is still current and relevant, to satisfy NEPA requirements would limit duplicative reviews and reduce the amount of delay in the NEPA process. If current information is already available as the result of compliance with transportation planning requirements, that information should satisfy NEPA regulations as well. This would increase efficiency and maintain environmental protection. Duplicative reviews serve no redeeming purpose as part of the NEPA process, and should be eliminated wherever possible.

- **Clear time lines for NEPA reviews:** There is no set time limit for NEPA decisions. When they begin a NEPA review, project planners have no sense of when the process is going to be completed. Strict, enforceable timelines for NEPA decisions would add predictability to the NEPA process and allow project planners to more accurately plan schedules for environmental review.

However, ARTBA recognizes that a uniform deadline may not work for every project. In setting NEPA schedules, discussions involving the lead agency and project sponsor should take place in order to determine a realistic time frame for the project and allow for project-specific flexibility.

ARTBA commends CEQ for initiating a discussion of these common-sense NEPA reforms long supported by ARTBA and supports their inclusion in the draft guidance. One area where ARTBA would recommend CEQ go further, however, is coordination between federal agencies, both for conducting NEPA reviews as well as sharing information and documentation. While increased coordination should certainly be encouraged, ARTBA stresses the need for a strong lead agency to shepherd this coordination process. For all transportation projects, the lead agency should be the U.S. Department of Transportation (DOT).

The basic problem is that the development of a transportation project involves multiple agencies besides DOT evaluating the impacts of the project as required by NEPA. While it would seem that the NEPA process would establish a uniform set of regulations and submittal documents nationwide, this has not been the case. For example, the EPA, Corps, FWS and their companion state agencies each require an independent review and approval process, forcing separate reviews of separate regulations, and unique determinations of key benchmark issues—such as the purpose and needs of a project—and requiring planners to answer multiple requests for additional information. Also, each of these agencies issues approvals according to independent schedules.

While there has been significant ARTBA-supported progress on the issue of “lead agencies” in both the legislative and regulatory front, more needs to be done in this area. “Lead agencies” need the power to set enforceable schedules for other, participating agencies to follow during the NEPA process. Setting a mandatory schedule will allow the participating agencies to know in advance when their responsibilities need to be completed and plan accordingly. A stronger “lead agency” role for DOT in the NEPA process is essential to reducing delay and completing transportation projects.

In conclusion, NEPA was never meant to be a statute enabling delay, but rather a vehicle to promote balance. While the centerpiece of such a balancing is the environmental impacts of a project, other factors must be considered as well, such as the economic, safety, and mobility needs of the affected area and how a transportation project or any identified alternative will affect those needs. CEQ's guidance is an important and positive step in improving NEPA and ARTBA looks forward to continuing this dialogue.

Sincerely,

A handwritten signature in black ink, reading "T. Peter Ruane". The signature is written in a cursive, flowing style.

T. Peter Ruane  
President & C.E.O